



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: CardioMetrix
File: B-244837
Date: November 20, 1991

Robert J. Loring for the protester,
Edward C. Urbany and John Kmecz, United States Coast Guard,
Department of Transportation, for the agency.
Anne B. Perry, Esq., and Paul Lieberman, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

1. There is no requirement that a solicitation be so detailed as to completely eliminate all performance risks and uncertainties; solicitation which provides offerors with sufficient detail to adequately prepare offers need not include detailed itemized breakdowns reflecting prior contract performance.
2. Protest that solicitation requirement for insurance under a contract for medical laboratory services is improper is denied where the agency reasonably determined that the requirement is necessary to protect its interests.
3. Solicitation requirement that contractor obtain agency approval for changes in key personnel and facilities is not unreasonable where the solicitation required offerors to list key personnel and facilities and provided for their evaluation, and the agency determines that approval is necessary to maintain an adequate level of performance throughout the period of performance.
4. Allegation that solicitation requirement for cost and pricing data is unreasonable is denied where the requirement is consistent with applicable law and regulation, and offerors are permitted to request a waiver of, or exemption from, the requirement.

DECISION

CardioMetrix protests the terms of request for proposals (RFP) No. DTCG84-91-R-3KB600, issued by the United States Coast Guard, Department of Transportation, for medical reference laboratory services for 21 Coast Guard clinics

throughout the Maintenance and Logistics Command Atlantic area. CardioMetrix argues that the solicitation lacks sufficient detail and contains requirements that are unduly restrictive of competition.

We deny the protest.

The solicitation calls for a contractor to provide, in its own facility, pathology/laboratory services for various tests as required by Coast Guard medical officers or civilian physicians under agreement with the Coast Guard, through specimen referral. These services are to be provided for 21 separate clinics. The RFP provides for a base-year contract and four 1-year options. The estimated value is \$880,000 for the base year, and \$3,520,000 for the option years, for a total estimate of \$4,400,000.

On June 18, 1991, the RFP was issued to 51 potential offerors. Due to questions posed by several potential offerors, the agency issued amendment No. 1 to extend the date for receipt of initial proposals from July 18 until July 25 to enable the agency to reply to the questions by amendment. On July 18, CardioMetrix filed this protest with our Office objecting to various terms of the solicitation.

The protester objects to four specific aspects of the solicitation: (1) the failure to provide specific estimates of the tests and quantities of each to be provided at each clinic; (2) the requirement for insurance and liability coverage; (3) the requirement that contractors obtain agency approval for substitutions of key personnel and facilities; and (4) the requirement for certified cost or pricing data.

CardioMetrix alleges that the solicitation fails to include enough specific information to enable it to provide an accurate price. The protester requests that the solicitation be redrafted to provide an itemized breakdown for each of the 21 clinics as to estimated type and quantity of every service. CardioMetrix disputes the agency's argument that it cannot predict the estimated needs of each clinic, by asserting that it obtained copies of invoices from each clinic documenting the exact workload requirements at each site, and that therefore, "it would require very little additional effort" for the agency to provide the requested information to offerors.

The protester does not contend that the solicitation is ambiguous but merely complains that the provisions do not provide what it considers to be sufficiently detailed information to allow it to derive an exact cost estimate upon which to base its price. As a general rule, a procuring agency must give sufficiently detailed information in its solicitation to enable offerors to compete

intelligently and on a relatively equal basis. T&A Painting, Inc., B-229655.2, May 4, 1988, 88-1 CPD ¶ 435. Specifications must be free from ambiguities and must describe the minimum needs of the procuring activity accurately. However, there is no legal requirement that a solicitation be so detailed as to completely eliminate all performance uncertainties and risks. Hero, Inc., 63 Comp. Gen. 117 (1983), 83-2 CPD ¶ 687. Such perfection, while perhaps desirable, is manifestly impracticable in some procurements. Id.

Here, the agency utilized a consolidated solicitation with total estimated quantities of the requirements of all clinics in the Atlantic area. The agency in essence states that while it can estimate its total requirements, because of shifting Coast Guard populations served by each clinic it is impossible for it to accurately predict the test needs of each clinic on an individual basis. The protester has not shown this position to be unreasonable. Moreover, CardioMetrix has not provided any rationale for its contention that the total estimated quantities contained in the RFP are not sufficient to enable it to adequately prepare an offer. Thus, we find no merit to this aspect of the protest.

CardioMetrix next alleges that the RFP requirement for specified insurance coverage (Federal Acquisition Regulation (FAR) § 52.228-5) is invalid and irrelevant since the requirement pertains to work done on government property and the testing is to be performed at the contractor's own facility. The protester states that the only time spent on government property is approximately 5 minutes, the time it takes for the firm's courier to pick up the specimens, which cannot justify imposition of the insurance requirement.

Under FAR § 28.310(a), when a contract award calls for work on a government installation, the contracting officer is required to include in the solicitation the provision found at FAR § 52.228-5, which calls for the contractor to provide and maintain insurance coverage as specified in the solicitation. (This solicitation required Workmen's Compensation and General Liability Insurance. As amended, it also permitted the contractor to meet the insurance requirements though self-insurance.) FAR § 28.310(a)(1) exempts from this requirement situations where only a small amount of work is performed on the government installation, such as where there will be only "a few brief visits per month." Whether the amount of work required on a government installation in any given case is sufficiently "small" such that insurance should not be required is essentially a matter for the contracting officer, who must determine whether the government's interests will be adequately protected if insurance is not required. Here, the RFP

requires more than a few visits each month since daily pickups are called for at each of 21 different sites. Further, the services being performed involve the handling of material such as human blood and other bodily fluids. Under the circumstance, we think the contracting officer could conclude that the daily pickup of this material involved sufficient risks that insurance coverage was warranted. Thus, we do not find unreasonable the agency's determination that insurance coverage is required.

CardioMetrix also objects to the RFP provision which requires agency approval of key personnel and facilities changes. The protester alleges that the provision as written applies to all contractor employees and as such is unworkable and impractical. CardioMetrix argues that it "is ludicrous for the Coast Guard to require the Contractor to obtain permission for reassignment, hiring or firing employees who may have some involvement in the Coast Guard laboratory work." The protester argues that this unnecessarily interferes with the firm's management functions, and therefore should be deleted as a requirement in its entirety.

The clause in question provides that:

"The personnel and/or facilities as specified in the Schedule of this contract are considered essential to the work being performed hereunder. Prior to removing, replacing, or diverting any of the specified individuals or facilities, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract."

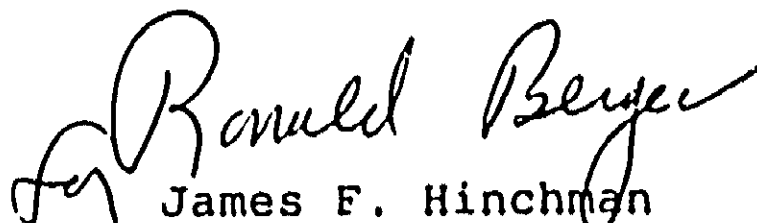
The solicitation has specific requirements regarding the types of experience and licensing required for proposed technicians and facilities, and provides for the evaluation of these aspects of an offeror's proposal. Where a contractor's selection is predicated on the contractor's possession of special capabilities, and these capabilities are evaluated and form the basis for award, we do not believe it is unreasonable for the agency to require assurance that the level of performance throughout the contract will equal that which was offered in the proposal. That is all this clause does. In this regard, and contrary to CardioMetrix's allegations, the clause does not apply to all contractor employees; it applies only to those employees who were proposed by the contractor as the sources of its expertise. In light of the type of services being procured under this solicitation, the requirement for approval of key

employee substitutions is not improper. See, e.g., Danoff & Donnelly; Kensington Assocs., B-243368; B-243368.2, July 26, 1991, 91-2 CPD ¶ 95.

CardioMetrix's final allegation is that the requirement for certified cost and pricing data, which includes a cost breakdown of 300 line items, is nearly impossible to comply with and is unreasonable. The protester argues that previous Coast Guard contracts for clinical laboratory services have not required this type of line item cost breakdown, and that the agency has not demonstrated why this contract is so significantly different from previous contracts that it warrants this type of cost information.

FAR § 15.804-2(a)(2) requires certified cost or pricing data for contracts, such as this, that exceed \$100,000.¹ See, e.g., Bay Cities Servs., Inc., 70 Comp. Gen. 4 (1990), 90-2 CPD ¶ 271. Accordingly, the contracting officer was required to call for certified cost or pricing data under this RFP, irrespective of whether such data were required under other contracts for laboratory services. The RFP also permits waiver of, or exemption from, the requirement to submit the data if certain conditions are met. Under these circumstances, we have no basis to conclude that the requirement for certified cost or pricing data under this solicitation is improper.

The protest is denied.


James F. Hinchman
General Counsel

¹While the FAR provides a \$100,000 threshold, the threshold in 10 U.S.C. § 2306a (Supp. II 1990), which is applicable to the Coast Guard, recently was raised to \$500,000. The contract price here is substantially higher than either threshold.